

(2002) 08 CAL CK 0032
In the Calcutta High Court
Case No : F.M.A. No. 70 of 2000

Sujoy Poddar (Dr.)

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 19-08-2002

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2003) 1 ILR (Cal) 43

Hon'ble Judges : Ashok Kumar Mathur, C.J.; Jayanta Kumar Biswas, J

Bench : Division Bench

Advocate : Goutam Wilson, for the Appellant; Milan Bhattacharya and Swarup Pal for State Respondents; A.K. Mukherjee, for Respondent No. 7; Uttam Kumar Majumdar, for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Jayanta Kumar Biswas, J.—By the judgment dated April 26, 2001 a learned Judge of this Court was pleased to dismiss Appellant's writ petition No. 5428 (W) of 2001. It was dismissed on the ground that the Respondent No. 7, who had terminated Appellant's service, was not an instrumentality or agency of the State. The present appeal is against that judgment.

2. With effect from June 1, 1993 "Gandhi Peace Foundation Urban Family Welfare Project", of 111A, Shyam Prasad Mukherjee Road, Calcutta 700 026, appointed the Appellant as a Medical Officer of its "North Family Welfare Centre". It was a private unregistered voluntary organisation (hereinafter referred to as "the said organisation"). Respondent No. 7 was its secretary. The Appellant was appointed in a post of temporary nature, and subject to the conditions laid down by the said organization.

3. On July 30, 1999 the said organization issued a charge-sheet against the Appellant. As many as thirteen charges were levelled. Gross negligence in duties, insubordination, unauthorized removal of office records, misbehaviour, etc. were

alleged against the Appellant. On said July 30, 1999 itself the Appellant was placed under suspension.

4. The Appellant did not reply to the said charge-sheet dated July 30, 1999. Instead he filed a suit in the Civil Court. Consequently the said said organization issued another notice dated August 25, 1999. By this notice the Appellant was asked to show cause as to why his service should not be terminated. This notice came back to the organization with the postal endorsement "not claimed". In the circumstances by an order dated September 15, 1999 the said organization terminated the Appellant's service.

5. By filing the writ petition No. 16614 (W) of 1999 in this Court, the Appellant challenged the said termination order. The said writ petition was admitted by an order wherein it was recorded that the suit earlier filed by the Appellant would stand dismissed. By the judgment and-order dated October 1, 1999 a learned Judge of this Court was pleased to allow the said writ petition and set aside the said termination order. The termination order was set aside on the ground that it had been passed only for non-reply to the show cause notice. The learned Judge directed the Appellant to reply to the show cause notice, and gave liberty to the said organization to decide the matter after making enquiry.

6. Thereupon, an enquiry was conducted into the allegations. The enquiry officer submitted his report dated May 10, 2000. He found the Appellant guilty of all the charges. Copy of the enquiry report was supplied to the Appellant on June 14, 2000. The Appellant filed a belated representation against the enquiry officer's findings. After considering all the materials on record and the findings of the enquiry officer, by an order dated April 4, 2001 the said organization dismissed the Appellant from service with effect from April 1, 2001. Challenging the said termination order the Appellant filed the writ petition on which the judgment impugned in this appeal was passed.

7. Appellant's main case in the writ petition was:

The said organization was not a society registered under the West Bengal Societies Registration Act, 1961. It was a private voluntary organization. Its Family Welfare Center was run with 100% finance from the Central Government; disbursed through the State Government. Salary and allowances were paid to him as per Revision of Pay and Allowances Rules of the Government of West Bengal. The said organization was actually being run by the Department of Health and Family Welfare of the Government of West Bengal. The Government's control over the Appellant's job as well as the activities of the said organization was deep and pervasive. The Appellant was appointed and paid, by the State of West Bengal. Accordingly, he being a Government employee (as claimed by him in his representation dated June 21, 2000) the disciplinary proceeding could not have been initiated against him by the said organization; and only the State Government was empowered to hold an enquiry against him for any alleged misconduct.

8. The State-Respondents contested the said writ petition by filing an affidavit-in-opposition. The case made out by the State Respondents was:

The said organization was one of the private voluntary non-government organizations working on family welfare projects with the Central Government Grant-in-aid; disbursed through the State Government. The Appellant had been appointed by the said organization; and the said organization qua the appointing authority terminated his service. The Appellant was not an employee of the State of West Bengal, nor had the State anything to do with the Appellant's termination from service. In its letter-heads the said organization unauthorisedly used the words, "(Under Dept. of Health & F.W. Govt. of West Bengal)". When such unauthorized activities of the said organization came to the Government's notice, it directed the said organization to delete at once those words from the letter-heads. The said organization was neither an instrumentality, nor an agency of the State Government, and the State Government had no control over the said organization.

9. The Respondent No. 7, although was a party-Respondent to the writ petition, chose to contest the same without filing any affidavit-in-opposition.

10. The statements made in the opposition filed by the State Respondents were, however, dealt with by the Appellant in his affidavit-in-reply, wherein it was further contended that without having any registration under the West Bengal Societies Registration Act, 1961, the said organization had been allowed to implement Government project, therefore it must be held to be an instrumentality or agency of the State.

11. The learned Judge after hearing the parties was pleased to dismiss the writ petition. He held that in view of the Apex Court decision given in the case of Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other[OVERRULED], the fact of mere financial contribution by the State to the said organization could not be taken as the conclusive factor to declare it an instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India.

12. The Learned Counsel for the Appellant has taken us through the pleadings and various documents included in the paper book. His submissions are as follows:

13. From the documents produced, it is clear that although the said organization is a voluntary organization, it is run. directly by the State of West Bengal with 100% finance received from the Central Government. The activities carried on by the said organization are public activities directed towards public welfare, and those activities are, in reality, being carried on by the State of West Bengal; and for this the State of West Bengal has deep and pervasive control over the activities of the said organization; and the recruitment of employees by it. Appellant's case is squarely covered by the principles laid down by the Apex Court in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and

Others, .

14. He has also relied on the decisions given by the Supreme Court in the cases of Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, and District Manager, A.P.S.R.T.C., Vijaya Wada v. K. Shivaji and Ors. AIR 2001 S.C. 383.

15. The Learned Counsel for the State-Respondents has contended that in the facts and circumstances of the case the learned Judge was fully justified in holding that the writ petition was not maintainable, as the said organization was a mere voluntary private organization. He has also drawn our attention to the Constitution Bench decision of the Supreme Court given recently in the case of Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, .

16. The Learned Counsel for the Respondent No. 7 has submitted that the said organization was all along and still is a pure and simple private voluntary unregistered non-government organization. He has produced before us the memorandum of association of the said organization; and has submitted that registration under the West Bengal Societies Registration Act, 1961 is yet to be granted to it by the competent authority.

17. After considering the submissions of the respective parties and perusing the materials on record, we are of the view that the learned Judge rightly dismissed the writ petition. We so hold for the following reasons.

In Tekraj's case (supra) the Supreme Court held:

In a Welfare State, as has been pointed out on more than one occasion by this Court, governmental control is very pervasive and in fact touches all aspects of social existence. In the absence of a fair application of the tests, to be made there is possibility of turning every non-governmental society into an agency or instrumentality of the State. That obviously would not serve the purpose and may be far from reality. A broad picture of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach the reasonable conclusion.

18. The recent Constitution Bench of the Supreme Court in Pradeep Biswas's case (supra) has considered almost all the important judgments on the question. After considering all the judgments, Their Lordships were pleased to hold:

The picture that ultimately emerges is that the tests formulated in *Ajay Hasia* are not a rigid set of principles so that if a body falls within any one of them it must, *ex hypothesi*, be considered to be a State within the meaning of Article 12. The question in each case would be--whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory

whether under statute or otherwise, it would not serve to make the body a State.

19. In the case before us, there is nothing to say that the said organization is a body financially dominated or controlled by the Government. True that for the Family Welfare Project the said organization gets 100% Government grants. But there is nothing to say that the said organization has been established solely for the purpose of carrying on the Government sponsored family, welfare activities; and nothing else. There is also nothing before us from which it can be said that the said organization does not get any other financial help or assistance from person or persons other than the Government. From its rules and regulations, produced in Court, we find that for carrying on activities it can collect all sorts of subscriptions, donations and deposits.

20. We find that its functions related to the family welfare activities are only regulated by the Government. Such regulatory steps are being taken by the Government only to ensure that the Government grant is used for the purpose for which it is released. The family welfare activities are earmarked by the Government; naturally, the said organization is bound to spend the monies received from the Government only for such earmarked activities. Directions given by the Government regarding recruitment of competent employees and payment of salaries at the rates prescribed in Government rules, are nothing but mere regulatory conditions attached to Government grants. The Government has a right to oversee these activities. Government's such regulatory role cannot be equated with functional dominance or control over the said organization which is purely an unregistered private voluntary organization. The said organization is free to function in any other field, its such function, if there is any, is not all, and rather cannot be, regulated or controlled by the Government.

21. As far as the question of administrative dominance and control of the Government is concerned: we find that in the present case the same is nil. The Government does not control in any manner the administration of the said organization, far less to speak of dominance over the same. As to who will be the members of the society and who will not be, Is entirely up to the said organization. The Government has no say at all for the same. The Government is not concerned in any manner with the administration of the said organization.

22. The admitted position is that the said organization is only one of the numerous Non-Government Organizations (commonly known as NG Os) operating in different fields of activities through permissive participation in welfare projects sponsored by the Government. The Appellant's contention that the said organization was directed by the Government to pay salary and allowances in accordance with the pay scales prescribed by the Government, therefore he became an employee of the State Government is absolutely without any substance. Since the Government was releasing the grants, it was entitled to direct the said organization to give pay and allowances to its employees, engaged in family welfare project, at certain prescribed scales of pay. But such direction and compliance therewith do not make the employees appointed by the

said organization, the employees of the Government.

23. We also do not find any merit in the Appellant's contention that his case is squarely covered by the principles laid down in *Ajay Hasia's case* (supra). One distinguishing feature of the present case, alone, is enough to say that *Ajay Hasia's case* (supra) is of no help to the Appellant. In that case the Government was empowered to appoint and remove the members of the society. In the case before us, the Government is no body for the purpose of appointment and removal of the members of the said organization, which has the absolute right to exist or perish according to its sweet will.

24. In view of the above factual position we find that the said organization, a mere voluntary private unregistered organization, was not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, the learned Judge was perfectly justified in dismissing the writ petition.

25. For the aforesaid reasons we find no merit in the instant appeal; and accordingly the same is hereby dismissed. There will be no order as to costs.

Ashok Kumar Mathur, C.J.

26. I agree.